

Present
ADW
Gerald Lebovits *DS*
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
KRISTOPHER FUHR and SARA OBSTARCZYK, :

Plaintiff, :

-against- :

LISA SMITH and A GOOD DOG RESCUE, INC. :

Defendants. :
-----X

ALL A.S. Part 7 of the Supreme
Court of the State of New York, held in
and for the County of New York, at the
Courtroom located at 60 Centre Street,
New York, New York, on the 18th
of April, 2025.

Index No. 153767/2025

**[PROPOSED] ORDER TO SHOW
CAUSE AND TEMPORARY
RESTRAINING ORDER**

MS# 1 - INJUNCTION

Upon reading the filing by Plaintiffs Kristopher Fuhr and Sara Obsterczyk ("Plaintiffs") of the Affidavit of Kristopher Fuhr¹, dated April ⁸7, 2025, together with the exhibits attached thereto, the Affidavit of Sara Obsterczyk², dated April ⁸7, 2025, together with the exhibits attached thereto, the Affirmation in Support of the Order to Show Cause of Joshua I. Gornitsky, Esq dated April 7, together with the exhibit attached thereto seeking an order to show cause for a preliminary injunction and a temporary restraining order pending the hearing on the preliminary injunction, pursuant to Civil Practice Law and Rules ("CPLR") §§ 6301, 6312 and 6313; and

WHEREAS Plaintiffs have shown that they will suffer immediate and irreparable injury in the event that Defendants Lisa Smith and A Good Dog Rescue, Inc. ("Defendants") continue to

¹ The Plaintiffs are in possession of a notarized copy of Mr. Fuhr's affidavit and will provide it directly to the Court upon request. The Plaintiffs are concerned about providing the notarized affidavit over NYSCEF, as both the identity of the notary and the notary stamp itself could be used to determine the Plaintiff's location and be used by the Defendants for further harassment and intimidation.

² The Plaintiffs are in possession of a notarized copy of Ms. Obstarczyk's affidavit and will provide it directly to the Court upon request. The Plaintiffs are concerned about providing the notarized affidavit over NYSCEF, as both the identity of the notary and the notary stamp itself could be used to determine the Plaintiff's location and be used by the Defendants for further harassment and intimidation.

publish defamatory statements on their social media accounts that encourage harassment and violence against the Plaintiffs;

^{LET}
ORDERED that Defendants shall show cause before this Court in Room ^{at 245 PM 7} 345 60 Centre Street, New York, New York 10007, on May 9, 2025, at 9:30 a.m./~~pm~~, or as soon thereafter as counsel may be heard, why an order should not be issued: (i) preliminarily enjoining during the pendency of this action the Defendants from posting personal details about the Plaintiffs on their social media accounts; ii) preliminarily enjoining during the pendency of this action the Defendants from creating posts advocating harassment and violence against the Plaintiffs; iii) requiring the Defendants to permanently remove all social media posts that contain personal details about the Plaintiffs (such as their home address) and that advocate harassment and violence against the Plaintiffs; and it is further

ORDERED that, pending a hearing on the motion for a preliminary injunction, a Temporary Restraining Order, pursuant to CPLR § 6313, shall be entered: (i) restraining the Defendants from posting ~~personal details about~~ ^{home address(es) and telephone number(s)} the Plaintiffs on their social media accounts; ii) ~~restraining the Defendants from creating posts advocating harassment and violence against the Plaintiffs;~~ ^{the plaintiffs' home address(es) and telephone number(s)} iii) requiring the Defendants to remove all social media posts that contain ~~personal details about the Plaintiffs (such as their home address) and that advocate harassment and violence against the Plaintiffs;~~ and it is further

Granted only to the extent indicated, and otherwise denied, for the reasons set forth below.

GL *[Signature]*

ORDERED that, in the exercise of the Court's discretion pursuant to CPLR § 6313(c), Plaintiffs are not required to give an undertaking pending the hearing on this order to show cause; and it is further

Granted.

GL *[Signature]*

ORDERED that Patrick Doerr PLLC, Plaintiff's attorneys, shall serve ^{by personal service} a copy of this Order and the summons with notice to Show Cause, together with a copy of the papers upon which it is based, on or before _____

2025: upon: (a) Lisa Smith, c/o A Good Dog Rescue, 218 Croton Dam Road, Ossining, NY 10562;

b) A Good Dog Rescue, 218 Croton Dam Road, Ossining, NY 10562; and 3) Defendant's Attorney,
via email and efilings

~~Stuart Halper, Esq., via E-mail, stuarthalper@hotmail.com.~~

ORDERED, that opposing papers, if any, to this motion shall be served via NYSCEF and
via email to mark.doerr@patrickdoerr.com and joshua.gornitsky@patrickdoerr.com, so as to be
received on or before May 2, 2025, and reply papers, if any shall be filed and served in the

manner set forth above so as to be received on or before May 9, 2025.

No personal appearance is required or permitted on the motion submission date of May 9, 2025.

**If the court concludes upon the submission of the motion that oral argument is warranted, the court
will notify the parties by email to schedule a virtual argument on Microsoft Teams.**

~~Dated: New York, New York~~

~~_____ 2025~~

ENTERED

~~ORAL ARGUMENT
DISMISSED~~
J.S.C.


HON. GERALD LEBOVITZ
J.S.C.

Movants ask this court to require defendants to remove all social media posts that contain personal details about them and that advocate harassment and violence against them. But movants do not identify particular social media posts that they want removed, whether by date, by poster, or by statements within the posts. The categories of information that movants wish defendants to be required to remove are not sufficiently specific to provide adequate guidance either to the court or to defendants in determining whether (and what) posts should be removed--particularly--given the number of posts at issue (as reflected in the screenshots provided by movants themselves, see e.g. NYSCEF No. 6). This request is granted only to the extent that defendants must remove posts on their social media accounts (whether made by defendants themselves or by third parties) that include residential addresses at which movants are living or currently staying, and their work or personal telephone numbers.

Movants also ask this court to restrain defendants, going forward, from posting personal details about them on defendants' social media accounts and from creating posts advocating for harassment or violence against movants. This form of a relief, a prior restraint on speech, "bears a heavy presumption against its constitutional validity" and must satisfy a "correspondingly heavy burden of demonstrating justification for its imposition." (*Brummer v Wey*, 166 AD3d 475, 476 [1st Dept 2018] [internal quotation marks omitted].) Any order imposing a prior restraint "must be tailored as precisely as possible to the exact needs of the case." (*Kassenoff v Kassenoff*, 213 AD3d 822, 824 [2d Dept 2023].) The restraints sought by movants are neither clear and specific nor precisely tailored. Instead, movants maintain that defendants have been "repeatedly and viciously defaming the Plaintiffs on social media." (NYSCEF No. 12 at 1.) But "prior restraints are not permissible merely to enjoin the publication of libel." (*Brummer*, 166 AD3d at 477 [internal quotation marks omitted].) Nor have movants shown that defendants' social media posts, to the extent that they "could reasonable be construed as advocating unlawful conduct," is directed to inciting imminent conduct and likely to bring it about, as required to justify a prior restraint on that basis. (*Id.* at 478.)

This court reaches a different conclusion only with respect to movants' address/contact information. Posting this information serves only to harass movants (and encourage their harassment). The Appellate Division has made clear that narrow, focused restraints on a defendant, aimed toward preventing harassment of plaintiff carried out through speech directed to third parties, are constitutionally permissible. (See *Dennis v Napoli*, 148 AD3d 446, 447 [1st Dept 2017].)